

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 7101

BILL NUMBER: SB 359

NOTE PREPARED: Mar 15, 2006

BILL AMENDED: Mar 14, 2006

SUBJECT: Procurement and State Public Works.

FIRST AUTHOR: Sen. Hershman

FIRST SPONSOR: Rep. Messer

BILL STATUS: Enrolled

FUNDS AFFECTED: X GENERAL
X DEDICATED
X FEDERAL

IMPACT: State & Local

Summary of Legislation: *Equipment and Software:* This bill provides that advance payment may be made for equipment or software acquired by a state agency, regardless of cost, with the prior approval of the Budget Agency under certain circumstances.

Retainage: The bill provides discretion to determine when retainage on a state public works contract should be placed in an escrow account. It provides that certain bid, performance, and payment bond and retainage requirements do not apply to railroad projects of a commuter transportation district.

Drug Testing: It requires contractors and subcontractors on state public works projects to implement employee drug-testing programs.

Purchasing: The bill establishes a negotiated bidding process for procurement of supplies by the executive branch of state government under which the purchasing agency may conduct discussions with bidders before awarding a contract under an invitation for bids to obtain a best and final offer. It requires a purchasing agency to maintain a bid register documenting the purchasing agency's negotiations with bidders. The bill makes technical changes to the statute authorizing reverse auctions. The bill also repeals a statute that prohibits the use of a reverse auction to purchase certain construction equipment. It eliminates the requirement for a purchasing agent in the executive branch to make a written determination as a condition to award a contract using an RFP. This bill permits a purchasing agency in the executive branch to use information obtained from an offeror's proposal in discussions with other offerors under certain circumstances.

Small Business Preference: The bill provides that an information technology, life sciences, transportation, or

logistics business that employs more than 100 persons or that has annual sales of more than \$5,000,000 is not eligible for a small business preference.

The bill also makes technical changes.

Effective Date: July 1, 2006.

Explanation of State Expenditures: *Equipment and Software:* The impact of this provision would depend on how often the Budget Agency allows advance payment for equipment or software acquired by a state agency. The provision may make it easier for the state to acquire some equipment and computer software when an advance payment is required.

Drug Testing: The bill may increase the cost of state public works projects if the contractor and subcontractors include the cost of drug testing in their bids.

The bill requires contractors and subcontractors to include the plans for their drug-testing program with their bids. The programs must include:

1. Subjecting each of the contractor's employees at least one time a year to testing.
2. At least 2% of employees must be randomly selected each month for testing.
3. The test must test for at least:
 - a. Amphetamines.
 - b. Cocaine.
 - c. Opiates (92000 ng/ml).
 - d. PCP.
 - e. THC.
4. Impose progressive discipline on an employee who fails a drug test. The progression must be at least:
 - a. 30 days suspension after first positive test.
 - b. 90 days suspension after second positive test.
 - c. 1 year suspension after third positive test.The employee would also have be directed to a program of treatment or rehabilitation and be subject to unannounced testing for one year.

A contractor that is subject to a collective bargaining agreement would be treated as having an employee drug testing program requirement if the agreement:

1. Provides for random testing of employees.
2. Includes a five-drug panel that tests for substances listed above.
3. Imposes disciplinary measures. The measures at a minimum must include the following:
 - a. Employee is subject to suspension or immediate termination.
 - b. Employee is not eligible for reinstatement until the employee tests negative on a five-drug panel test.
 - c. Employee is subject to unscheduled sporadic testing for a least one year after reinstatement.
 - d. Employee successfully completes a rehabilitation program if the employee fails more than one drug test.

The testing cost could range from about \$6 per test to \$500 per test, depending on the test used. In the aggregate, the testing costs would probably represent only a minor increase in a public works project cost.

Retainage: The provision to allow the state to decide if a retainage is required could reduce the administrative costs of retainage on certain projects. The provision would probably have minor state fiscal impact.

Purchasing: The changes in the bidding process should reduce the public purchasing costs. It is unknown how much the changes would save.

Small Business Preference: Current law requires the Indiana Department of Administration (IDOA) to adopt rules concerning small business set-aside purchases. IDOA could incur minimal costs to adopt rules defining a small business in the information technology, life sciences, transportation, or logistics sectors as a business with fewer than 100 employees and annual sales of less than \$5.0 M.

Explanation of State Revenues:

Explanation of Local Expenditures: *Small Business Preference:* Current law permits governmental bodies, including the bodies of political subdivisions, to establish criteria for determining small businesses. The rules adopted by a governmental body must include specific criteria in the wholesale, construction, retail, and manufacturing sectors. Governmental bodies could incur costs for adding the criteria for businesses in the information technology, life sciences, transportation, or logistics sectors.

See also *Explanation of State Expenditures* regarding purchasing.

Explanation of Local Revenues:

State Agencies Affected: All.

Local Agencies Affected: All.

Information Sources:

Fiscal Analyst: Chuck Mayfield, 317-232-4825.